

COMMONWEALTH OF KENTUCKY  
MINE SAFETY REVIEW COMMISSION  
ADMINISTRATIVE ACTION NO. **06-MSRC-014**

COMMONWEALTH OF KENTUCKY,  
OFFICE OF MINE SAFETY AND LICENSING

COMPLAINANT

**FINAL ORDER**

**DAVID CHESTER BEVINS**

RESPONDENT

\* \* \* \* \*

**PROCEDURAL HISTORY**

This matter comes before the Mine Safety Review Commission upon a Motion for Default by the Complainant, Kentucky Office of Mine Safety and Licensing ("OMSL"). OMSL by counsel, filed its Complaint on April 17, 2006, against the Respondents as above. Probable Cause was determined by the Mine Safety Review Commission ("Commission") on May 11, 2006 regarding the Respondent. Subsequent to that determination the Order for Probable Cause, Assigning Case, Setting Filing Requirements, Scheduling Pre-hearing Conference and Scheduling Formal Hearing ("Order") was mailed regular mail and certified mail to the respondent as above with a copy of the Complaint attached.

The Order and Complaint were delivered to Respondent David Chester Bevins on May 19, 2006 by certified mail. The original return receipt show delivery to Respondent Bevins' residence and mailing address

### FINDINGS OF FACT

1. OMSL is the agency charged with administering the Commonwealth's safety laws as set forth in KRS Chapters 351 and 352 and the Kentucky Administrative Regulations adopted pursuant thereto.
2. Respondent David Chester Bevins ("Bevins") was, at all times relevant to this Complaint, a citizen and resident of the Commonwealth of Kentucky, whose mailing address is: 564 Right Fork of Beaver Creek, Elkhorn City KY 41522. At all times relevant to this Complaint, Bevins was a certified underground miner at the Inspiration Resources No. 2 mine ("the mine"), an underground coal mine operated by Inspiration Resources, Inc., ("Inspiration" or "the company") and located at Biggs, Pike County, Kentucky.
3. Respondent Bevins is also certified in gas detection by the Commonwealth of Kentucky on certificate number PE-672-82. He is also certified by the Commonwealth as an underground miner.
4. Jurisdiction for this action is founded upon KRS 352.390, which provides that the "Mine Safety Review Commission shall revoke, suspend, or probate certificates if it is established in the judgment of the Commission that the holder has become unworthy to hold the certificate by reason of violation of law, intemperate habits, incapacity, abuse of authority, failure to comply with the mining laws of the Commonwealth of Kentucky, or for other just cause;" on KRS 351.025(1), which requires the Department of Mines and

Minerals (now the Office of Mine Safety and Licensing) to “promulgate administrative regulations...for the imposition and enforcement of sanctions against certified...personnel...whose intentional violation of, or order to violate, mine safety laws places miners in imminent danger of serious injury or death;” and on 805 KAR 8:030 (“Criteria for the imposition and enforcement of sanctions against certified miners”).

5. Service of the Order and Complaint upon Respondent Bevins is determined to be perfected pursuant to 825 KAR 1:020 Section 5 (3) and KRS 13B.050.
6. Respondent Bevins did not file an Answer or any other responsive pleading within the time limit established by the Commission and KRS 13B and has not filed an Answer or other responsive pleading on or before the Motion for Default Order was filed at MSRC. Additionally, Respondent Bevins has not filed a response to or opposed the Motion for Default Order on or before the date of this order, July 13, 2006.

#### CONCLUSIONS OF LAW

Based upon the evidence admitted, the failure of the Respondent to deny or otherwise defend and the record taken as a whole, the Commission finds the foregoing facts are established by a preponderance of the evidence. By reason of his role in and responsibilities for the violations of Kentucky’s mine safety laws set out in the Complaint of record herein, Respondent Bevins is subject to the imposition of sanctions as provided in KRS 352.390 and 805 KAR 8:030.

### FINAL ORDER

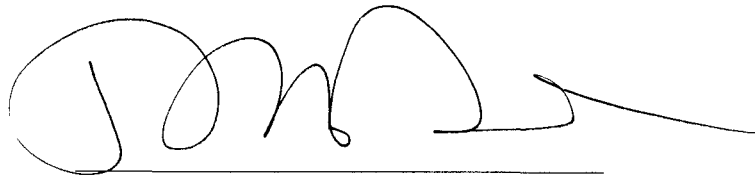
**WHEREFORE,** it his hereby **ORDERED** by the Mine Safety Review Commission:

1. The Motion for Default Judgment as to David Chester Bevins is **GRANTED**.
2. The Formal Hearing and Pre-Hearing Conference, and other pre-hearing deadlines are hereby **CANCELLED** as to Bevins.
3. The Commission Orders and incorporates the disciplinary measures as provided in the Complaint as to Bevins and the following measures as a material part of this **FINAL ORDER**.
4. Bevins's surface and underground miner's certificates shall be placed on **probation** for a period of one (1) year.
5. Bevins's gas detection certificate number PE-672-82, shall be **suspended** for a period of six (6) months.
6. Bevin may not take the mine foreman's examination during the term of the one (1) year probationary period.
7. During his period of probation Respondent Bevins shall be required to comply with all state and federal mine safety laws and regulations and that the willful violation of any said laws or regulations may result in OMSL filing a motion with the Mine Safety Review Commission to revoke that Respondent's underground miner's certificate for the remainder of the probationary period.

8. Respondent Bevins shall be required to take **eight (8) hours of special safety training** from an OMSL's Pikeville district office within forty-five (45) days of the date that this judgment is entered against them.
9. This Final Order only resolves the matters referenced herein, and any new enforcement action or subsequent penalties imposed during any probationary period are in addition to and not in lieu of those that may be sought by OMSL for the acts or omissions during that probationary period. This Final Order in no way prohibits OMSL from investigating or filing legal action based upon other activities or omissions by the Respondent not arising from the factual basis of the original violation and resolved herein.
10. This Final Order shall be considered to constitute a "first offense" as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by Respondent, resulting in an adjudication of guilt by the Commission, shall be deemed "subsequent offenses" as defined by 805 KAR 8:010, Section 1(13);
11. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, in these matters. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission; and

12. Appellate rights: Pursuant to KRS 351.194(8) and KRS 13B.140(1), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of this Final Order. The petition shall include the names and addresses of all parties of record in this proceeding and shall include a statement of the grounds upon which review is requested. A copy of this Final Order shall accompany the petition. Copies of the petition must be served upon the Commission and all parties of record in this proceeding.

Entered this the 13<sup>TH</sup> day of July 2006.

A handwritten signature in black ink, appearing to read 'DM', with a long horizontal line extending to the right.

DENISE MOORE DAVIDSON, CHAIR  
MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FINAL ORDER was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this 14<sup>TH</sup> day of July 2006:

DAVID CHESTER BEVINS  
564 RIGHT FORK OF BEVER CREEK  
EKLHORN CITY KY 41522-8614

And by messenger mail to:

Hon. Steven C. Boyd  
Office of Legal Services  
Natural Resources Legal Division  
#2 Hudson Hollow  
Frankfort, Kentucky 40601  
(502) 564-2356  
FAX: (502) 564-9212

And the original shall be kept on file:

Mine Safety Review Commission  
132 Brighton Park Blvd.  
Frankfort Ky 40601



Bryon Alan Thompson  
Hearing Officer & General Counsel  
Mine Safety Review Commission